

Internal Revenue Service

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Person To Contact:

, ID No.

Telephone Number:

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CC:PSI:B02

PLR-139730-08

Date:

October 22, 2008

X =

State =

A =

B =

C =

Trust1 =

Trust2 =

Trust3

D1 =

D2 =

D3 =

D4 =

Dear

This responds to a letter dated September 26, 2008, and subsequent correspondence submitted on behalf of X by X's authorized representative, requesting invalid election relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on D1 under the name A and elected to be an S corporation effective D1. The X stockholders were C (an individual), Trust1, Trust2, and Trust3 (collectively, the Trusts). The beneficiaries of Trust1, Trust2, and Trust3 did not consent to the Form 2553, Election by a Small Business Corporation, for the Trusts. Consequently, Trust1, Trust2, and Trust3 did not properly consent to X's election to be an S corporation. The failure of the Trusts' beneficiaries to properly consent to X's election made the election invalid on D1 under § 1362(a)(2). The Form 2553 also contained several clerical errors.

On D2, stockholders of X contributed their X shares to corporation B in exchange for the stock of B. On D4, X changed its name from A to X.

On D3, X represents that the IRS granted X relief pursuant to Revenue Procedure 98-55, 1998-2 C.B. 643, for inadvertent failure to timely make qualified subchapter S trust (QSST) elections for Trust1, Trust2, and Trust3.

X represents that the circumstances resulting in X's invalid S corporation election were inadvertent and not motivated by tax avoidance. X further represents that from D1, X and its shareholders have filed all returns consistent with X's status as an S corporation. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which it was made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election was ineffective for the taxable year beginning D1 because the failure of the Trust1 beneficiary, the Trust2 beneficiary, and the Trust3 beneficiary to consent on behalf of each Trust to X's election to be an S corporation. We further conclude that the ineffectiveness of X's S corporation election constituted an inadvertent invalid election within the meaning of § 1362(f). In addition, we conclude that the clerical errors on Form 2553 did not cause the election to be invalid. Accordingly, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from D1 to D2, provided X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d). If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

Based on the information submitted, we rule that the facts set forth have no effect on the D2 inadvertent termination relief pursuant to Revenue Procedure 98-55 for inadvertent failure to timely make QSST elections for Trust1, Trust2, and Trust3. The inadvertent termination relief will remain in full force and effect.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation or the validity of its S corporation election. Further, no opinion is expressed as to whether Trust1, Trust2, and Trust3 qualify as QSSTs.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: